IN THE HIGH COURT OF JUDCIATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

JAGDISH CHANDRA. V. THE STATE OF RAJASTHAN AND OTHERS.

S. B. CIVIL WRIT PETITION NO. 5304/93.
Under Article 226 of the Constitution of India.

DATE OF ORDER: 5/5/2005

PRESENT

HON'BLE MR. JUSTICE R. P. VYAS

Mr. C.P.Trivedi, for Petitioner.
Mr.N.M.Lodha, Additional Advocate General,
for the State of Rajasthan – Respondents.

BY THE COURT:-

REPORTABLE

By this writ petition, the petitioner has prayed that the orders dated 6.6.1987 (Annexure 5) and 1.9.1987 (Annexure 6) may be quashed and set aside and he may be given the benefit of with-holding of two grade increments. He has also prayed that due amount of suspension period may be paid to him.

The facts giving rise to the instant petition are that initially, on 1.2.1968, the petitioner was appointed as Lower Division Clerk (LDC) in the Urban Improvement Trust (UIT), Chittorgarh.

On abolition of UIT, on 1.9.1978, all the employees of the UIT, Chittorgarh, were adjusted in Nagarpalika, Chittograrh.

The further case of the petitioner that on 7.2.1990, the petitioner was promoted from L.D.C. To the post of Upper Division Clerk (UDC) but, later on, he was again reverted to the post of LDC.

The petitioner moved an application dated 11.3.1987 (Annexure 1) to the Executive Officer, Nagarpalika, Chittorgarh stating therein that he, being a UDC, has been deputed in Revenue Section, whereas Shri Bot Lal Sharma, LDC, has been deputed in Construction Section. In this way, he being a Senior to Shri Sharma, his rights have been infringed.

On the aforesaid application, without affording an opportunity of hearing to him, the petitioner was placed under suspension by order dated 20.3.1987 (Annexure 2), passed by the Administrator, Nagarpalika, Chittogarh. Thereafter, on 27.4.1987, a notice (Annexure 3) under the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as 'the CCA Rules, 1958'), for using harsh and unparliamentary language against the Administration, was issued to the petitioner. The petitioner filed a detailed reply dated 11.5.1987 (Annexure 4) to the notice (Annex.3).

According to the petitioner, disciplinary proceedings were not conducted by the Department in accordance with the Rules. He was not afforded an opportunity of hearing. He was also not supplied a copy of the enquiry report.

On the basis of the enquiry report, Respondent No.2 – Administration, Nagarpalika, Chittogarh issued an order dated 6.6.1987 (Annexure 5), by which one grade increment of the petitioner with cumulative effect was withheld and the petitioner was punished accordingly.

Against the order dated 6.6.1987 (Annexure 5), the petitioner preferred an appeal before Respondent No.4 – the Regional Assistant Director, Local Self-Government Department, Rajasthan, Udaipur. The appeal of the petitioner was rejected vide order dated 1.9.1987 (Annexure 6). Respondent No.4, while making an amendment in the order dated 6.6.1987 (Annexure 5), by which one grade increment of the petitioner was withheld with cumulative effect, passed an order dated 1.9.1987 (Annexure 6), by with-holding two grade increments of the petitioner with cumulative effect.

Being aggrieved by the order dated 1.9.1987 (Annexure 6), the petitioner filed a suit in the Court of Munsif Magistrate, which was, later on, withdrawn by him.

The petitioner has preferred the instant petition against the orders dated 6.6.1987 and 1.9.1987 respectively.

It is submitted by the learned counsel for the petitioner

that the notice was issued and enquiry was conducted by the Department under Rule 17 of the CCA Rules, whereas punishment of withholding of two grade increments with cumulative effect was given, which is a major penalty and cannot be awarded under Rule 17 of the CCA Rules. It is against the provisions of the CCA Rules, 1958. It is further submitted that no opportunity of hearing was given to the petitioner. It is also submitted that the principles of natural justice were not observed by the Department. In this view of the matter, according to the learned counsel for the petitioner, the orders dated 6.6.1987 (Annexure 5) and 1.9.1987 (Annexure 6) are not sustainable in the eye of law, therefore, the same should be quashed and set aside.

In support of his contention, learned counsel for the petitioner has relied on Kulwant Singh Gill v. State of Punjab (1991 Suppl. (1) SCC 504). In that case, the appellant, while working as Inspector, Food and Supplies was found by the Director of Food and Supplied to have purchased substandard wheat. A charge sheet was issued to him. But, on consideration of the explanation of the appellant, the disciplinary authority found that the appellant had committed a minor misconduct. Accordingly, an order was issued directing stoppage of two increments of the appellant with cumulative effect. Then, in such a situation, their Lordships of the Supreme Court held that

stoppage of two grade increments with cumulative effect is a major penalty which is per se illegal. When penalty was imposed wothholding two increments i.e. for two years with cumulative effect, it would indisputably mean that the two increments earned by the employee were cut off as a measure of penalty for ever in his upward march of earning higher scale of pay. The clock was put back to a lower stage in the time scale of pay and on expiry of two years, the clock started working from that stage afresh. The insidious effect of the impugned order, by necessary implication, is that the appellant employee is reduced in his time scale by two places and it is in perpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time scale of pay as a measure of penalty. The Supreme Court further held that such order would be without jurisdiction or authority of law and it would be per se void. In the instant case, under Rule 17 of the CCA Rules, 1958, major penalty of stoppage of two grade increments with cumulative effect cannot be awarded to the petitioner. If the major punishment is awarded by the Authority, then it is not justified and sustainable in the eye of law.

On the other hand, it is submitted by the learned counsel for the respondents that the petitioner has already challenged the impugned orders dated 6.6.1987 and 1.9.1987 (Annexs. 5 and 6 respectively), before the Munsif Magistrate, therefore, in such circumstances, this writ petition is not maintainable. It is

also submitted that the Executive Officer, Municipal Board, Chittogarh has been impleaded as Respondent No.3 in the writ petition by the petitioner, whereas he has nothing to do with the present matter, therefore, on account of misjoinder of parties, the instant petition of the petitioner deserves to be dismissed.

It is contended by the learned counsel for the respondents that the petitioner was not promoted on ad hoc basis on account of his excellence service record, but he was promoted to the post of UDC from LDC as there were certain vacancies, so when the regular selections were made, the petitioner was reverted back to the post of LDC. So far as the posting of the petitioner in the revenue section is concerned, it is submitted that all the LDCs. working in the Office of the Municipal Board, Chittogarh are of one cadre and there is no pattern for posting any L.D.C. or U.D.C. in the Revenue Section. All the clerks are required to discharge the clerical job, whether in Revenue Section or Construction Section, it does not make any difference, so, the petitioner was also given the clerical job.

It is further contended by the learned counsel for the respondents that the petitioner misbehaved with the officers, he used harsh and unparliamentary language against the officers, in reply to the notice, therefore, an enquiry, in accordance with the CCA Rules was conducted and, thereafter, he was suspended vide Annexure 2.

It is also contended by the learned counsel for the respondents that an opportunity of hearing as well as the opportunity to produce his defence was given to the petitioner and, thereafter, the order of punishment was passed against him. It is strenuously argued by the learned counsel for the respondents that even if major penalty of withholding of two grade increments with cumulative effect has been awarded to the petitioner under Rule 17 of the CCA Rules, which is not in accordance with law, then, this Court may order for conducting a de novo enquiry against the petitioner in accordance with the Rules.

Heard learned counsel for the parties.

Be that as it may, it is admitted position that the petitioner has been awarded a major penalty of stoppage of two grade increments with cumulative effect under Rule 17 of the CCA Rules, which, in my considered opinion, is not accordance with law. Apart from that, the petitioner was not afforded an opportunity of hearing. The principles of natural justice were also not followed. Thus, it will not be in the interest of justice to order the Department to conduct a de novo enquiry, against the petitioner, in accordance with the CCA Rules, after lapse of such a long period. There is no reason that a fresh enquiry should be ordered to be conducted in all cases. When the enquiry has been completed and finding has been given then, after elapse of such a long period of time, a de novo enquiry will not serve any useful

purpose. The de novo enquiry is conducted when there is a procedural fault in the departmental enquiry. But, in the instant case, the enquiry has been completed long back and finding has been given. Thereafter, two grade increments of the petitioner have been with-held with cumulative effect, which is illegal. Thus, in this view of the matter, the arguments of the learned counsel for the respondents are not sustainable.

Taking an overall view of the matter and in the interest of justice, I deem it just and proper to allow the writ petition.

Consequently, the writ petition is allowed, the orders dated 6.6.1987 (Annexure 5) and 1.9.1987 (Annexure 6) are quashed and set aside. The respondents are directed to release the increments in favour of the petitioner and make payment of all due arrears to the petitioner within a period of one month from the date of receipt of a certified copy of this order.

The parties are left to bear their own costs.

(R.P. VYAS), J.

scd.